

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548****FILE:** B-220756**DATE:** March 28, 1986**MATTER OF:** Steven C. Krems - Loan Origination Fee**DIGEST:**

A transferred employee claimed a 3 percent loan origination fee but the agency limited reimbursement to 1 percent, based on HUD's advice that a 1 percent loan origination fee is customary nationwide. However, HUD's advice was limited to FHA-insured loans and did not apply to the employee's conventional mortgage. We hold that the employee is entitled to reimbursement for a 3 percent loan origination fee because he has demonstrated by a Federal Home Loan Bank's survey of local lenders that a 3 percent fee was customary in the locality for the particular type of conventional financing involved.

Ms. Margaret E. Wenzel, an authorized certifying officer for the Internal Revenue Service (IRS), has requested our decision on Mr. Steven C. Krems' claim for a 3 percent loan origination fee he incurred when purchasing a residence at his new duty station. As explained below, we hold that Mr. Krems is entitled to reimbursement for a 3 percent loan origination fee because he has submitted evidence demonstrating that a 3 percent fee was customary in the locality for the type of financing involved.

FACTS

Effective October 1, 1984, Mr. Krems was transferred from Washington, D.C., to Chicago, Illinois. In March 1985, he settled on the purchase of a new residence in Chicago. Mr. Krems financed the purchase of his residence by obtaining a conventional adjustable rate mortgage, and paid a 3 percent loan origination fee in the amount of \$1,608.

The IRS limited Mr. Krems' reimbursement for a loan origination fee to 1 percent of the loan amount, stating that a 1 percent fee is "customary" and citing our decision

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in Roger J. Salem, B-214018, June 27, 1984, published at 63 Comp. Gen. 456 (1984), discussed below. Also, the IRS indicated that it had contacted the Chicago area office of the Department of Housing and Urban Development (HUD), and was advised that a 1 percent fee is "customary nation-wide."

Mr. Krems reclaimed the disallowed 2 percent fee, arguing that he is entitled to reimbursement based on the customary charge for loan origination fees in the Chicago area. He states that the 1 percent figure quoted by HUD's Chicago office does not represent the fee prevailing locally for the type of loan he obtained, and he has submitted a letter from the HUD office advising him that: (1) the 1 percent figure it quoted to IRS represents the customary loan origination fee only for loans insured by the Federal Housing Administration (FHA); (2) the Chicago office of HUD does not maintain information concerning customary charges for other types of mortgages; and (3) information concerning loan origination fees for mortgages not insured by the FHA should be obtained from the Illinois Mortgage Bankers Association.

Mr. Krems contacted the bankers association and, in turn, was referred to the Federal Home Loan Bank of Chicago. The Federal Home Loan Bank provided Mr. Krems with the results of a survey of more than 80 lending institutions in Illinois, conducted during the month of March 1985. The survey results list loan fees customarily charged by local lenders according to the type of mortgage involved and specific financing terms (e.g., amount of the downpayment, allowable rate change over the life of the mortgage). The survey results show that, at the time Mr. Krems obtained his loan, the average loan origination fee for the particular type of adjustable rate financing he obtained was approximately 2.8 percent.

Mr. Krems also submitted a private consulting firm's report summarizing the results of a survey of mortgage costs in the Chicago area. However, the only percentage figures listed in the report are characterized as "points," and the report does not identify the period of time covered by the survey.

Against this background, the IRS questions whether Mr. Krems may be reimbursed for a loan origination fee in excess of 1 percent.

DISCUSSION

Under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses he incurs in selling and purchasing a residence pursuant to a permanent change of station. Effective October 1, 1982, the implementing regulations in paragraph 2-6.2d(1) of the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1983), were amended to permit reimbursement for loan origination fees and similar charges which are not specifically disallowed by FTR para. 2-6.2d(2). See Robert E. Kigerl, 62 Comp. Gen. 534 (1983). Under FTR para. 2-6.2d(1), reimbursement for a loan origination fee is limited to the amount customarily charged in the locality of the employee's new residence. See Patricia A. Grablin, B-211310, October 4, 1983.

Interpreting the "customary charge" limitation stated in FTR para. 2-6.2d(1), we held in Gary A. Clark, B-213740, February 15, 1984, that an agency may rely on technical assistance provided by the local office of HUD in determining the customary loan origination fee in a given locality. We stated that the information supplied by HUD creates a rebuttable presumption as to the prevailing loan origination fee charged in the area, and is controlling in the absence of evidence overcoming that presumption. Applying evidentiary standards developed in the context of real estate brokers' commissions, we suggested that an employee may be able to demonstrate through a survey of local lending institutions that the prevailing loan origination fee is higher than that quoted by HUD.

In Roger J. Salem, 63 Comp. Gen. 456, supra, cited by IRS, an employee incurred a 5 percent loan fee which was characterized on the settlement statement as a "loan origination fee." The agency allowed the employee reimbursement for 1 percent of the loan amount, based on HUD's advice that a 1 percent loan origination fee was customary in the locality. We denied the employee's claim for the additional 4 percent, determining under the particular

circumstances that the bulk of the lender's 5 percent charge represented a mortgage discount or "points," reimbursement for which is specifically prohibited by FTR para. 2-6.2d(2)(b). We concurred with the agency's determination to allow the employee reimbursement for a 1 percent loan origination fee based on HUD's advice, but concluded our decision by suggesting that the problem involved in Salem would be avoided if FTR para. 2-6.2d(1) was amended to impose a specific percentage limitation on reimbursement for loan origination fees.

In Egbert H. Thompson and Sam Losoya, B-217603 and B-217584, September 4, 1985, we declined to read Salem as in itself imposing a 1 percent limitation on reimbursement for loan origination fees. We explained that, under the existing provisions of FTR para. 2-6.2d(1), a loan origination fee is reimbursable to the extent it does not exceed the amount customarily charged in the locality for the type of transaction involved.

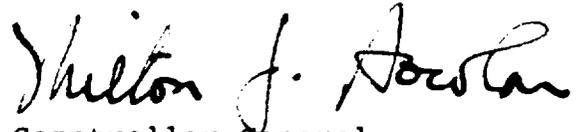
In this case, it appears that the agency's determination to limit Mr. Krems' reimbursement for a loan origination fee to 1 percent of the loan amount was based in part on the interpretation of Salem which we rejected in Thompson and Losoya, above. Furthermore, although the IRS contacted HUD's office in Chicago for information concerning the customary loan origination fee in that area, the 1 percent figure quoted by HUD is not relevant to Mr. Krems' claim because it pertains only to FHA financing. See William I. Massengale, B-185863, August 25, 1976, in which we held that the determination whether a charge is "customary" for purposes of the FTR must be made with reference to the particular type of financing involved.

Mr. Krems has submitted the results of a comprehensive survey conducted by the Federal Home Loan Bank of Chicago, a lending institution established by the Federal Home Loan Bank Board under the authority of 12 U.S.C. § 1423 (1982). According to the survey results, lending institutions offering the particular type of financing obtained by Mr. Krems charged loan origination fees averaging 2.8 percent. Since the 2.8 percent fee quoted in the survey report represents an average charge, it is reasonable to presume that some of

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the surveyed fees ranged as high or higher than 3 percent. Under these circumstances, we conclude that the 3 percent loan origination fee Mr. Krems incurred was within the range of fees customarily charged in the locality. See generally Thompson and Losoya, cited above.

Accordingly, we hold that Mr. Krems may be reimbursed for the full 3 percent loan origination fee he paid on the purchase of his new residence in Chicago.



Acting Comptroller General
of the United States